

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION FIVE**

**LORIEN FRANKFORD NURSING  
& REHABILITATION CENTER**

**Employer**

**and**

**Case 5-UC-389**

**SERVICE EMPLOYEES INTERNATIONAL  
UNION, DISTRICT 1199E-DC, AFL-CIO**

**Petitioner**

**DECISION AND ORDER**

Service Employees International Union, District 1199E-DC, (herein Petitioner) filed the instant unit clarification petition under Section 9(b) of the Act, Section 101.17 of the Board's Statements of Procedure, and Section 102.61 (e) of the Board's Rules and Regulations, seeking to include cooks into the bargaining unit.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act for the Board to assert jurisdiction herein. Based on an administrative investigation and the facts from that investigation, I will clarify the unit as requested by the Petitioner to include the cooks in the existing bargaining unit.

**I. BACKGROUND AND BARGAINING HISTORY**

On September 12, pursuant to a Stipulated Election Agreement, a secret ballot election was conducted under my direction at the Employer's premises to determine if the petitioned-for employees desired to be represented by the Petitioner for purposes of collective bargaining.<sup>1</sup> A majority of the ballots in that election were cast in favor of the Petitioner. Two cooks attempted to vote in that election, but their ballots were challenged by the Board agent conducting the election because the cooks' names did not appear on the *Excelsior* list. The challenges to the cooks' ballots were not determinative. On September 19, the Employer timely filed objections to the conduct of the election and alleged, *inter alia*, the election was tainted by the actions of

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<sup>1</sup> All dates are 2002 unless expressly noted otherwise.

supervisory cooks who unlawfully campaigned for the Petitioner by threatening and coercing employees into signing union cards and who represented to the employees that management was in favor of the union. On September 26, the Employer withdrew its objections to the conduct of election. The Regional Director approved the withdrawal of the objections on September 27. Accordingly, on September 27, the Petitioner was certified as the exclusive bargaining representative of the following unit:

[a]ll full-time and regular part-time geriatric nursing aides/certified nursing aides, unit secretaries, certified medicine aides, housekeepers, dietary workers, floor technicians, activities assistants, laundry workers, maintenance employees, universal workers, and receptionists employed by the employer at its Baltimore, Maryland location; but excluding all physicians, registered nurses, licensed practical nurses, technical employees, confidential employees, office clerical employees, professional employees including social workers, managerial employees, guards and supervisors as defined in the Act.

Following certification, the Petitioner and the Employer met, conferred, and negotiated with respect to the unit employees' wages, hours, and other terms and conditions of employment. During these negotiations, the Petitioner raised the status of the cooks. Currently, the Employer still employs two cooks at its Baltimore, Maryland, location. The Petitioner argued the cooks share a community of interest with the other unit employees and, given the absence of other legal arguments or factual reasons for their exclusion, should be included in the unit. The Employer countered the cooks are statutory supervisors under Section 2(11) of the Act and sought their exclusion on that basis; specifically, the Employer averred the cooks oversee and direct the dietary workers in the dietary workers' normal performance of their duties.

Notwithstanding their respective positions concerning the placement of the cooks, in an attempt to amicably resolve the matter and reach a collective-bargaining agreement, the parties agreed to enter into and execute a collective-bargaining agreement expressly excluding the cooks from the bargaining unit but also entered into and signed a side-bar agreement whereby the Petitioner reserved its right to file the instant unit clarification petition with the Board to settle the placement of the cooks.

The collective-bargaining agreement was executed by the parties on October 21, 2003, and is effective by its terms from September 24, 2003, through September 23, 2004.

## **II. LEGAL PRINCIPLES**

Section 9(c)(1) of the Act expressly empowers the Board to certify results of a Board representation secret ballot election. The authority of the Board to both police and clarify such certifications when it effectuates the policies of the Act is a corollary to the expressed grant of power in Section 9(c)(1). *See* Section 102.60 (b) Board's Rules and Regulations. So as not to disrupt an established bargaining relationship, the Board will not generally entertain unit

clarification petitions in the midterm of a collective-bargaining agreement; however, the Board has, on proper petition, clarified an existing unit shortly after a contract is executed where the parties could not reach agreement on the disputed classification but did not wish to press the issue at the risk of not reaching agreement, as long as the petitioner did not abandon its position with respect thereto for a *quid pro quo* contract concession. *St. Francis Hospital*, 282 NLRB 950, 951 (1987). *See also Baltimore Sun Co.*, 296 NLRB 1023 (1989).

### **III. POSITION OF THE PARTIES**

#### **A. PETITIONER'S POSITION**

The Petitioner contends the cooks share a community of interest with the other employees in the unit and should therefore be included. The Petitioner argues that cooks neither possess nor exercise any of the required indicia for supervisory status in Section 2(11) of the Act. The Petitioner further argues there are no other factual or legal reasons warranting the cooks' exclusion from the unit. In bargaining with the Employer in September and October 2003, the Petitioner opposed the Employer's proposed change to the bargaining unit to exclude the cooks and only agreed to their exclusion on the condition of the letter of understanding reserving its right to file the instant petition.

#### **B. EMPLOYER'S POSITION**

By letter dated January 13, 2004, to the Petitioner and the undersigned, the Employer proffered that record evidence at a hearing on the unit clarification petition would show that while the cooks routinely provide instruction and direction to dietary aides, the Employer would be unable to meet its burden of proving the supervisory status of the cooks. The Employer represented there were no procedural defenses to the inclusion of the cooks in the unit, who otherwise enjoy a community of interest with other unit employees. For these reasons, the Employer is no longer opposed to the inclusion of the cooks into the current bargaining unit and is willing to include them in the current bargaining unit.

### **IV. CONCLUSION AND ORDER**

Based on the investigation of the instant petition and the foregoing facts, IT IS HEREBY ORDERED that the Petitioner's petition for unit clarification be, and is, granted, and the existing bargaining unit be clarified expressly to include cooks employed by the Employer at its Baltimore, Maryland, facility.

**V. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. The request must be received by the Board in Washington by **March 22, 2004**.

Dated March 8, 2004  
At Baltimore, Maryland

/s/ WAYNE R. GOLD  
Regional Director, Region 5



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